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**IN THE
COURT OF APPEALS OF INDIANA**

ALONDA WILSON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0509-CR-872
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0506-CF-112153

August 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Alonda Wilson appeals the revocation of her probation. After a hearing, Wilson was ordered to serve the suspended portion of her sentence, 513 days, for attempting to obtain a controlled substance by fraud or deceit, a Class D felony. She claims a violation of her federal due process rights, and that there was insufficient evidence to support the conclusion that she violated her probation. Because a trial court's statement, reduced to writing in the form of the probation revocation hearing transcript, satisfies due process requirements, and because the State presented sufficient evidence establishing Wilson violated her probation by possessing cocaine, we affirm.

Facts and Procedural History

On July 14, 2005, Wilson pled guilty to attempting to obtain a controlled substance by fraud or deceit and was sentenced to 545 days imprisonment, of which 513 days were suspended. She was placed on probation and was subject to the standard terms of probation, which included that she "not commit a criminal offense" and "not associate with any person who is in violation of the law or any convicted felon" without approval from her probation officer. Appellant's Appendix at 30.

On August 1, 2005, the State filed a notice of probation violation alleging that Wilson was arrested and charged with possession of cocaine. Two Indianapolis Police Department officers testified during a hearing on the matter. They explained that after receiving complaints of drug trafficking taking place at Wilson's residence, the officers obtained a search warrant based on a confidential informant's purchase of drugs from an unidentified

male at the residence's front porch an hour and a half prior to serving the warrant. The officers testified that while other people sometimes stayed at the one-bedroom residence, Wilson was the only person living there.¹ They previously confiscated mail from the residence addressed to Wilson, and Wilson listed the residence's address as her address on the probation order.

Wilson was on the front porch with two teenage males when the officers served the warrant. Wilson claimed to be babysitting a child found in the bedroom. Officers discovered .27 grams of cocaine inside a small heart-shaped jewelry box on a bookshelf in the living room. On the same shelf, an inch or less away from the jewelry box, they found Wilson's Indiana identification card. Wilson testified that the drugs were not hers, she did not know the drugs were in the house, and claimed the person who sold the drugs earlier that day was a man named Thomas, whose last name she did not know, but who was from down the street.

The trial court determined that Wilson had violated her probation as follows:

Okay. All right. Looking at my file. And I take judicial notice of my file. I do look at the time standard conditions of probation that were filed July the 14th of this year, just a week before this arrest occurred, and I note that Ms. Wilson listed her address in her writing as 3503 N. Kenwood avenue, which is the subject of the testimony here today. I'll also note the standard conditions are that she's not to commit a criminal offence [sic]. And number ten is that she's not to associated [sic] with any person who is in violation of the law, or any convicted felon without a [sic] approval of her probation officer. It's clear to this Court that it appears that she was a resident in that house and was maintaining that home. If she is not guilty of the possession, which quite

¹ Despite the fact that the residence has only one bedroom, Wilson testified that five people besides herself live there: "A guy name [sic] Jerry Cable, Jerri Thomas, Zachary Thomas, Tywan Reynolds and another guy we call Pops." Transcript at 29. When asked who the "main residents" were, she included herself but omitted Pops. *Id.* at 29-30. Wilson also testified that the house is actually owned by Jerri Thomas, who is the girlfriend of Cable, Wilson's uncle. *Id.*

honestly, I think by a preponderance of the evidence she was. [sic] Certainly, she's guilty of maintaining a common nuisance and associating with a person who's in violation of the law. Based on all of that, the Court's going to find that she's violated the terms and conditions ever [sic] her probation. She will be sentenced to 513 days in the Department of Correction.

Tr. at 36-37. Although an abstract of judgment was entered, the trial court did not issue a written order revoking Wilson's probation. Wilson now appeals.

Discussion and Decision

I. Violation of Due Process

In our review of a probation revocation proceeding, we will not reweigh the evidence or reassess the credibility of witnesses, but we consider the evidence most favorable to the judgment. Sanders v. State, 825 N.E.2d 952, 954-55 (Ind. Ct. App. 2005), trans. denied. Probation is a favor granted by the State, which, once granted, cannot simply be revoked at the State's discretion. Id. at 955. "Probation revocation implicates a defendant's liberty interest, which entitles her to some procedural due process. Because probation revocation does not deprive a defendant of her absolute liberty, but only her conditional liberty, she is not entitled to the full due process rights afforded a defendant in a criminal proceeding." Id. (citations omitted). The due process requirements afforded to a defendant during probation revocation proceedings include:

(a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against her; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinder as to the evidence relied on and reasons for revoking probation.

Id.

Wilson contends that the trial court violated her due process rights when it “failed to provide a written statement of the evidence relied upon and the reasons for revoking Wilson’s probation.” Brief of the Appellant at 4-5. Wilson argues that the oral sentencing statement and the abstract of judgment are not sufficient to comply with her due process rights. We disagree.

The United States Supreme Court has explained that “the written statement requirement is to be understood as a procedural device whose goals are to promote accurate factfinding and to ensure the reviewability of a revocation decision.” Clark v. State, 580 N.E.2d 708, 711 (Ind. Ct. App. 1991) (citing Black v. Romano 471 U.S. 606, 105 S.Ct. 2254, 85 L.Ed.2d 636 (1985) (explaining the rationale underlying the written statement requirement); see also Morrissey v. Brewer 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (examining due process rights applicable to parole revocation proceedings); Gagnon v. Scarpelli 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) (applying Morrissey to probation revocation proceedings).

In Clark, during probation revocation proceedings, Clark was afforded a full evidentiary hearing with representation by counsel. After the evidence, the trial court heard closing arguments, and in Clark’s presence, “orally made findings of fact, revoked Clark’s probation, and stated his reasons for revocation from the bench.” Clark, 580 N.E.2d at 711. The trial court’s statement was later reduced to writing in the transcript of the hearing. Clark’s only complaint was that the trial court failed to make a separate written summary of the findings orally made at the hearing. This court held that “the written transcript of the

revocation hearing meets the . . . requirement that ‘a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation]’ be made.” Id. (quoting Morrissey, 92 S.Ct. at 2604).

Wilson’s circumstances mirror Clark’s with regard to the issuance of a written statement. She received an evidentiary hearing where counsel represented her and the trial court heard argument before making a statement from the bench, in Wilson’s presence, that explained the rationale for revoking Wilson’s probation. This statement was reduced to writing in the transcript now before us on appeal, and as such, is sufficient to meet the due process requirement of a written statement.²

Secondarily, Wilson asserts that the trial court’s basis for revocation of her probation shows reliance on allegations beyond those contained in the notice of probation violation. Specifically, Wilson claims that the trial court violated her due process rights when it based its decision in part on the conclusion that, “[c]ertainly, she’s guilty of maintaining a common nuisance and associating with a person who’s in violation of the law.” Tr. at 37.

Wilson is correct that the written notice of probation violation included only her arrest on the charge of possession of cocaine on July 22, 2005. Therefore, the premise of Wilson’s violation was not her maintenance of a common nuisance or her association with someone in violation of the law. The State made no arguments with regard to these issues, and concedes

² We reiterate our suggestion in Clark that it is prudent for trial courts to make written orders because “[a] particular record may not be clear enough to afford us an adequate basis of review based solely on the transcript of a revocation hearing. Where the record before us is insufficient to establish the facts found by the trial court and its reasons for revocation, we will remand for a written statement of these findings.” Id. at n.3.

that the trial court went “further than necessary” to conclude Wilson violated her probation. Brief of Appellee at 6. However, as the State also points out, the trial court’s reference to these other factors “does not negate or dismiss its original determination.” Id. Thus, while Wilson may not have had notice or an opportunity to be heard with regard to these additional findings by the trial court, she did receive the requisite due process with regard to the possession allegation in the notice of probation violation, which the trial court found true by a preponderance of the evidence, and which provided the primary basis for revocation of Wilson’s probation. As such, any error on the part of the trial court in making or relying upon the superfluous findings was harmless.

II. Sufficiency of the Evidence

Wilson also challenges the trial court’s revocation of her probation based on insufficient evidence showing that she possessed cocaine. A probation revocation hearing is civil in nature, and the State need only prove the alleged violation by a preponderance of the evidence. Podlusk v. State, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005). We review a trial court’s decision to revoke probation for an abuse of discretion. Id. As noted earlier, we will not reweigh the evidence or reassess the credibility of witnesses, but we consider the evidence most favorable to the judgment. Sanders, 825 N.E.2d at 954-55.

In order to prove Wilson violated her probation, the State was required to establish that she knowingly or intentionally possessed cocaine. Ind. Code § 35-48-4-6(a). Possession of an illicit substance can be shown by either actual or constructive possession. An individual has actual possession of an item when he or she has direct physical control over it.

Goffinet v. State, 775 N.E.2d 1227, 1230 (Ind. Ct. App. 2002), trans. denied. Because Wilson did not have direct physical control over the cocaine when the search warrant was served, the State was required to establish that she constructively possessed it.

To prove constructive possession, the State must show that Wilson had the intent and capability to maintain dominion and control over the contraband. Collins v. State, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005), trans. denied. Intent may be demonstrated through the defendant's knowledge of the presence of the contraband, and may be inferred from either the exclusive dominion and control over the premises containing the contraband, or if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. Id. Such additional circumstances may include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) contraband in plain view; and (6) location of the contraband in close proximity to items owned by the defendant. Id. Capability may be demonstrated by the defendant's "capability to exercise control over the item, that is, the ability to reduce the item to his personal possession or to otherwise direct its disposition or use." Conrad v. State, 747 N.E.2d 575, 582 (Ind. Ct. App. 2001), trans. denied.

It was clear to the trial court that Wilson "was a resident in that house and was maintaining that home." Tr. at 36-37. While this does not itself establish Wilson's knowledge of the presence of the cocaine, additional circumstantial evidence supports the finding of intent. This evidence included that cocaine was sold from the residence less than

two hours prior to the warrant being served, cocaine was discovered inside the residence, Wilson was the only adult present at the time the cocaine was discovered, the cocaine was discovered in a heart-shaped jewelry box, and Wilson's identification card was approximately an inch away from the jewelry box. This evidence also supports the conclusion that Wilson had the capability to maintain dominion and control over the cocaine. Consequently, we cannot say insufficient evidence existed from which the trial court could reasonably conclude that Wilson possessed cocaine, thereby violating the terms of her probation. We decline Wilson's invitation to reweigh the evidence and reassess witness credibility.

Conclusion

The trial court's statement, reduced to writing in the transcript of the probation revocation hearing, sufficiently fulfills Wilson's due process right to a written statement. To the extent that the trial court based its determination on more than Wilson's arrest on the charge of possession of cocaine, it erred. However, this error was harmless in light of the trial court's conclusion that Wilson possessed cocaine by a preponderance of the evidence, and because sufficient evidence was presented to support the trial court's determination. We therefore affirm the revocation of Wilson's probation.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.